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10/033,178	12/28/2001	Jean-Michel Lerdu	Hamelin *3	7318

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EXAMINER

SCHIFFMAN, JORI

ART UNIT

PAPER NUMBER

3679

DATE MAILED: 08/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/033,178

Applicant(s)

LERDU, JEAN-MICHEL

Examiner

Jori R. Schiffman

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 6, 12, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Tornya (US 4346872).

Regarding claim 1, Tornya discloses a fence comprising an upper horizontal rail 1, a lower horizontal rail 2, boards 6 extending between rails, at least one of the rails having separate half parts 3, 8, each of the parts including a cooperating fastener 17, 10 for securing parts together about the boards, at least one of the parts having longitudinally spaced ribs 14, each adjacent pair of ribs defining a space therebetween, and a board fitted into a space with the parts secured together about the boards.

As to claim 2, Tornya discloses both parts having longitudinally spaced ribs 4, 14, the ribs being opposed when the parts are secured together with each adjacent pair of opposed ribs defining a space therebetween.

Referring to claim 3, Tornya discloses a first vertical post 15, 16 extending transversely relative to the rails, the rails engaging the first post.

As to claim 6, Tornya discloses both rails 1,2 having separate half parts 3, 8, with at least one of the parts of each rail having longitudinally spaced ribs 4, 14.

Regarding claim 12, Tornya discloses a fence comprising an upper horizontal rail 1, a lower horizontal rail 2, boards 6 extending between rails, at least one of the rails having separate opposing half parts 3, 8, each of the parts including a complimentary part of a cooperating fastener 17, 10 for securing parts together about the boards, at least one of the parts having longitudinally spaced ribs 14, each adjacent pair of ribs defining a space therebetween, and a board fitted into a space with the parts secured together about the boards.

In regards to claim 13, Tornya discloses the complimentary parts of the fastener being slidably engageable in one direction for mechanically preventing disengagement in the opposite direction (col. 3, l. 53-64).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tornya (US 4346872) as applied to claim 1 above, and further in view of Weaver, III (US 4953830).

Regarding claims 4 and 7, Tornya discloses the claimed fence except for a second vertical post extending transversely relative to the rails and a third horizontal rail located above the upper horizontal rail. Applicant is reminded that duplicating the components of a prior art device, as taught by Weaver, is a design consideration within the skill of the

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art. In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960). It would have been obvious at the time the invention was made to a person of ordinary skill in the art to include a second vertical post and third horizontal rail in the fence of Tornya since it is well known in the art.

As to claims 8 and 9, since the third rail will be a duplication of the other two, modified Tornya discloses the third rail having separate half parts, each of the parts having cooperating fasteners for securing the parts together, and at least one of the parts including longitudinally spaced ribs, each adjacent pair of ribs defining a space therebetween, a board fitted into the space.

5. Claims 5, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tornya (US 4346872) in view of Weaver, III (US 4953830) as applied to claim 4 above, and further in view of Grimm et al. (US 4421302).

As to claims 5, 10, and 11, modified Tornya disclosed the claimed fence except for the each fence post fitting between the opposing half parts of each of the rails and the lower rail carrying the posts and boards. Grimm teaches a fence with each post 14 fitting between opposing half parts 25, 26 and 35, 36 of rails 24 and 34, respectively. Grimm further discloses the lower rail 34 carrying the post 14 and boards 46. It would have been obvious at the time the invention was made to a person of ordinary skill in the art to construct the posts of modified Tornya so that they fit between opposing half parts of the rails and so the lower rail carries the posts and boards as disclosed in Grimm for a professional finished appearance of the fence.

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6. Claims 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michael et al. (US 6231031) in view of Tornya (US 4346872).

Regarding claims 14-17, Michael discloses a fence (Fig. 5) comprising an upper horizontal rail (upper 44, 46), a lower horizontal rail (lower 44, 46), and boards 22 extending between the rails, at least one of the rails divided into two vertically opposing half parts 44, 46. Michael fails to disclose each part including a complimentary portion of a fastener for securing the parts together about opposite sides of a board, and one of the parts including a plurality of longitudinally spaced, transverse ribs extending toward the other of the parts, the opposing parts and each adjacent pair of ribs defining a space therebetween into which a board is fitted when the parts are secured together. Using fasteners to hold together parts of a fence is well known in the art of fencing. Tornya teaches each of the parts 3, 8 of a horizontal rail 1 including a complimentary part of a cooperating fastener 17, 10 for securing parts together about the boards, at least one of the parts having longitudinally spaced, transverse ribs 14, each adjacent pair of ribs defining a space therebetween, and a board fitted into a space with the parts secured together about the boards. It would have been obvious at the time the invention was made to a person of ordinary skill in the art to include a complimentary part of a cooperating fastener on each part of the rail, as well as at least one of the parts having longitudinally spaced, transverse ribs in Michael's rail as disclosed in Tornya to create a more secure connection of the rail to the boards so they are less likely to come apart.

***Response to Arguments***

7. Applicant argues that parts 3 and 8 in Tornya are not “half parts”. In response, the Examiner respectfully disagrees because parts 3 and 8 are two parts that, together, make up rail 1. Therefore, the two parts 3 and 8 in Tornya are appropriately considered to be “half parts” of the rail 1 and the rejection is maintained.

8. Applicant argues that Tornya fails to disclose “longitudinally spaced ribs”. In response, the Examiner disagrees because the ribs 14 extend outward from the bottom of rail part 8 and also define a space (see Fig. 9 of Tornya) when engaged with the other half part of the rail. When the combination is made with Grimm, the board 6 will extend into that space. Applicant also argues that the ribs are included on “two adjacent spacers” rather than on “one of said parts”. The Examiner would like to point out that the claim only requires that the ribs be included on “at least one of said parts” (see lines 4 of claims 1 and 12, respectively). Therefore, the rejection is deemed proper and is maintained.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jori R. Schiffman whose telephone number is 703-305-4805. The examiner can normally be reached on M-Th, and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne Browne can be reached on 703-308-1159. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-1113.

Jori R. Schiffman  
Examiner  
Art Unit 3679

JS  
August 11, 2003

  
Lynne H. Browne  
Supervisory Patent Examiner  
Technology Center 3679